

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**DIANA KRIEG,**

Plaintiff,

v.

Case No. CV 10-950-HU

**OPINION AND ORDER**

**MICHAEL J. ASTRUE, Commissioner  
of Social Security,**

Defendant.

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**SIMON, District Judge:**

On October 31, 2011, Magistrate Judge Dennis J. Hubel filed Findings and Recommendations in this case (doc. # 16). Judge Hubel recommended that the Commissioner's decision be reversed. No objections have been filed.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate's report[.]" *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*) (court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel's findings and recommendations for clear error

on the face of the record. No such error is apparent.

Accordingly, I ADOPT Magistrate Judge Hubel's Findings and Recommendation (docket # 16). This case is reversed and remanded for the payment of benefits.

IT IS SO ORDERED.

DATED this 4th day of January, 2012.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge